

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DWAYNE LAVELL ROBINSON,

Petitioner,

v.

SANDRA ALFARO,

Respondent.

Case No. [15-cv-01445-JD](#)

**ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS AND
DISMISSING MOTION TO STAY WITH
LEAVE TO AMEND**

Re: Dkt. Nos. 4, 9

Dwayne Lavell Robinson, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also applied for leave to proceed in forma pauperis. Petitioner was convicted in Alameda County, which is in this district, so venue is proper here. *See* 28 U.S.C. § 2241(d).

BACKGROUND

Oliver was found guilty after a jury trial of second degree murder and assault with a firearm. He was sentenced to fifty-two years to life in prison.

DISCUSSION

I. STANDARD OF REVIEW

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting

each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)).

II. LEGAL CLAIMS

As grounds for federal habeas relief, Robinson asserts that: (1) the prosecutor withheld *Brady* evidence; (2) the prosecutor committed misconduct; and (3) the trial court erred in limiting consideration of the prior weapons assault conviction of a witness. Robinson has also filed a motion for a stay as at least some of these claims are unexhausted and he wishes to exhaust further claims.

In *Rhines v. Weber*, 544 U.S. 269 (2005) the United States Supreme Court found that a stay and abeyance of a mixed federal petition should be available only in the limited circumstance that good cause is shown for a failure to have first exhausted the claims in state court, that the claim or claims at issue potentially have merit and that there has been no indication that petitioner has been intentionally dilatory in pursuing the litigation. *Rhines, supra*, at 277-78. In his motion for stay, Robinson cites to *Rhines* and requests a stay, however, he has failed to address if good cause exists for the failure to have previously exhausted these claims, if the claims potentially have merit, and whether he has been intentionally dilatory in pursuing the litigation. The motion to stay will be dismissed with leave to amend. Robinson may file an amended motion to stay and address the *Rhines* factors and specifically describe the claims he wishes to exhaust.

CONCLUSION

1. Leave to proceed in forma pauperis (Docket No. 9) is **GRANTED**.


2. The motion to stay (Docket No. 4) is **DENIED WITHOUT PREJUDICE**.

Petitioner may file an amended motion to stay within twenty-eight days of service of this order.

3. Petitioner must keep the Court informed of any change of address and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

IT IS SO ORDERED.

Dated: September 3, 2015



JAMES DONATO
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DWAYNE LAVELL ROBINSON,
Plaintiff,

v.

SANDRA ALFARO,
Defendant.

Case No. [15-cv-01445-JD](#)

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 3, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dwayne Lavell Robinson ID: AK-0159
North Kern State Prison A1-229 u
P.O. Box 5000
Delano, CA 93216

Dated: September 3, 2015

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO